JD–33–22
Tallahassee, FL

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

UNITED STATES POSTAL SERVICE

and **CASE 12-CA-271025**

TERESA JANICE BOYD, an Individual

John King, Esq.,
for the General Counsel.
Kelly Elifson, Esq.,
for the Respondent.

DECISION

Statement of the Case

IRA SANDRON, Administrative Law Judge. The case arises from an amended complaint issued on January 25, 2022 (the complaint), based on charges that Teresa Boyd (Boyd) initially filed on January 5, 2021, against the Respondent (the Postal Service).

The complaint alleges that since about October 17, 2020, the Respondent has violated Section 8(a)(3) and (1) of the Act by failing and refusing to assign and schedule city carrier (letter carrier) Boyd to a full-time limited duty assignment with 40 hours per week and instead scheduled her to work 1.5 hours per workday, 5 days per week, due to her activities as president of the National Association of Letter Carriers, Branch 1172, AFL–CIO (the Union).

This case was initially consolidated with Cases12-CA-278311 and 12-CA-278450, based on charges that Boyd filed alleging that various facilities of the Postal Service in Tallahassee, Florida, violated Section 8(a)(1) by failing and refusing to provide the Union with requested information. One such request was for information pertaining to her 1.5 hours per day work assignment. On January 25, the Regional Director issued an order severing them from the instant matter (GC Exh. 1(l)). On February 2, all parties entered into a formal settlement stipulation in these cases (GC Exh. 9), which is still being reviewed by the Agency.

Pursuant to notice, I opened the trial by Zoom on January 26, 2022. With the agreement of the parties, I conducted an in-person hearing in Tallahassee, Florida, from March 21–24, following

all COVID protocols mandated by the General Counsel for off-site hearings, and concluded the trial by Zoom on April 1. I afforded the parties a full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence.

Witnesses and Credibility

Counsel for the General Counsel (the General Counsel) called:

(1) Boyd.
(2) Nakita Bush (Bush), city carrier, Lake Jackson Post Office (Lake Jackson).
(3) La Deidra Gordon (Gordon), city carrier, Westside Station (Westside).
(4) Sharell Lamb (Lamb), city carrier assistant, Lake Jackson.
(5) Tammy Sheffield (Sheffield), city carrier, Leon Station (Leon).
(6) Kimberly Strickland Abu Kdiess (Strickland), city carrier assistant, Leon.
(7) Edward Miller (Miller), manager of customer services, Lake Jackson, as a 611(c) witness.
(8) Waylon Morrison (Morrison), postmaster, Thomasville, Georgia station, as a 611(c) witness.

The Respondent's witnesses were:

(1) Miller.
(2) Morrison.
(3) Claudette Ballard (Ballard), manager, Occupational Health Claims Office (OHCO), Jacksonville, Florida.
(4) Linda Bedrosian (Bedrosian), occupational health process specialist, Human Resources Office (HR), Jacksonville, Florida.
(5) Sylvia Morris (Morris), field manager, HR.
(6) Camille Moscola-Calvo (Moscola-Calvo), postmaster, Tallahassee.

I will address credibility, applying the following well-established judicial precepts. Firstly, a witness may be found partially credible because the mere fact that the witness is discredited on one point does not automatically mean he or she must be entirely discredited. *Golden Hours Convalescent Hospitals*, 182 NLRB 796, 799 (1970). Rather, a witness' testimony is appropriately weighed with the evidence as a whole and evaluated for plausibility. Id. at 798–799; see also *MEMC Electronic Materials, Inc.*, 342 NLRB 1172, 1183 fn. 13 (2004); *Excel Containers, Inc.*, 325 NLRB 17, 17 fn. 1 (1997).

Secondly, when credibility resolution is not based on observations of witnesses' testimonial demeanor, the choice between conflicting testimonies rests on the weight of the evidence, established or admitted facts, inherent probabilities, and reasonable inferences drawn from the record as a whole. *Taylor Motors, Inc.*, 366 NLRB No. 69, slip op. at 1 fn. 3 (2018); *Lignotock Corp.*, 298 NLRB 209, 209 fn. 1 (1990).

Managements witnesses were sometimes ambiguous and/or uncertain in testifying about events related to Boyd's limited duty, but I do take into account that there were many documents

involved over a period of years, as well as different claim numbers. I also take this into account when assessing Boyd's testimony. I also consider natural the inability of witnesses for the General Counsel to recall all the details surrounding their own claims.

Boyd was not fully credible. She testified that Morrison, to whom she submitted many or most of her CA-17s (forms for physicians to complete), told her on October 26, 2019, that her October 19, 2019, CA-17 was incorrectly filled out. On cross-examination, she testified that was the only time she could recall having been told that the CA-17 had to be fixed. However, her testimony was contradicted by a statement that she made in a January 4, 2020, email addressed to Morrison (GC Exh. 44), ("You also sent me back to have my CA-17 revised at least six (6) times because you said Linda [Bedrosian] would not accept them because they were incorrectly filled out."). I therefore credit Morrison's testimony that he advised Boyd on a number of occasions that the CA-17 she submitted was deficient.

Moreover, I believe that when Boyd described interactions with various managers and supervisors in her role as a union official, her depiction of their belligerence was exaggerated, and she understated her aggressiveness. In this regard, the Respondent disciplined her for her conduct on certain occasions and, although the disciplines were removed through the grievance procedure, I do not believe that management officials manufactured their assertions that she acted inappropriately.

I do, however, credit Boyd's testimony about having numerous conversations with Bedrosian in late 2019. Boyd's testimony on these conversations was sufficiently detailed, and I find her testimony plausible based on her ongoing efforts to obtain more hours. Bedrosian, on the other hand, testified that she "may have" spoken to Boyd but did not remember any conversations.

Morrison was notably defensive during cross-examination, and I had to tell him more than once to answer questions directly and not insist on offering explanations of his answers. He appeared to try to minimize management's role in formulating limited duty job offers (2499s) vis-à-vis OHCO. Furthermore, he was markedly evasive on cross-examination whether, in the absence of a modified job offer, he has assigned work duties to an employee different from his or her regular duties.

In contrast, Ballard testified credibly and did not appear to make any efforts to skew her testimony. I credit her testimony over Morrison's to the extent they differed over the role of local management in fashioning limited duty offers to employees based on their medical restrictions. The General Counsel avers (GC Br. at 13) that Ballard did not display candor on cross-examination. That was not my impression. In fact, on cross-examination, she testified that employees have submitted incomplete CA-17s and still been given limited duty job offers—testimony that supported Boyd's position.

Gordon's testimony about her submissions of CA-17s and receipts of 2499s was confusing, hard to follow, and contradictory. Most glaringly, she testified at one point that she worked between May and November 2020 under the terms of a 2499 but later testified that she stopped working in July 2020 and did not go back to work until November 2020. Accordingly, her testimony on her modified job offers was of questionable reliability.

Facts

Based on the entire record, including testimony and my observations of witness demeanor, documents, stipulations, and the thoughtful posttrial briefs of the General Counsel and the Respondent, I find the following.

Board jurisdiction as alleged in the complaint is admitted, and I so find. The Respondent provides postal services throughout the United States and operates various facilities nationwide, including the following facilities that are under the jurisdiction of the Tallahassee, Florida Postmaster: the Main Post Office; stations in Centerville (Centerville), Lake Jackson, Leon, and Westside; the General Mail Facility; and a retail unit at Killearn.

The Union represents city carriers operating out of the Tallahassee Post Office, as well as city carrier assistants (CCAs), who are noncareer and nonpermanent. About 75 city carriers work out of Lake Jackson.

At the outset, I will delineate the parameters of the evidence on which I will focus. On October 9, 2020, Acting Regional Director David Cohen (the Regional Director) dismissed charges that Boyd had filed alleging that the Respondent's limitations on her hours were in retaliation for her union, EEO, and other protected activities (R. Exh. 8, Case 12-CA-261361.) He concluded that the Postal service had demonstrated legitimate reasons for those limitations and that Boyd had failed to fully cooperate with management in pursuing her claim for more hours. He noted that in January 2020, Boyd had filed but withdrawn similar charges.

It is only reasonable to conclude that Boyd presented the Region with all relevant documents and all evidence supporting her claim of unlawful discrimination, and that the Regional Director properly considered them. Boyd did not appeal the dismissal, and I will not brush aside his decision and de novo consider events occurring prior to October 9, 2020. Accordingly, with one exception that I will describe, I will not address in detail events occurring prior to the date of the decision or consider them as background evidence of animus, even if they were within the 10(b) period. Analogously, the Board does not allow a party to relitigate in an unfair labor practice proceeding issues which were or could have been raised in a related representation case in the absence of newly discovered or previously unavailable evidence. *Krieger-Ragsdale Co.*, 159 NLRB 490, 494 (1966), enfd. 379 F.2d 517 (7th Cir. 1967), cert. denied 389 U.S. 1041 (1968), citing *Pittsburgh Plate Glass Co.*, 313 U.S. 146, 162 (1941).

Furthermore, I will not address in detail Boyd's communications with the Department of Labor (the DOL) regarding her workers compensation claims, over which I have no jurisdiction and, in any event, lack expertise to evaluate. The Postal Service has no control over the DOL, and actions of DOL either in favor or against Boyd cannot be imputed to the Respondent.

Employee injury framework

The statutory and regulatory scheme regarding postal employees injured on the job is complex and involves interplay between local management and other offices of the Postal Service,

the DOL, and treating physicians. I will summarize it here.

An employee who sustains an on-the-job injury reports it by filing a claim of injury (form CA-1) with his or her supervisor. An employee wishing to seek medication attention obtains from the supervisor an authorization to see a physician (form CA-16) and a duty status report form (CA-17) to present to the physician for completion. A physician can obtain and print a blank CA-17 form from DOL's Employee Compensation Operations Management (EComp) portal. The employee must also submit electronically any claim for medical treatment to the DOL's Office of Workers Compensation (OWCP), which assigns a case number.

The CA-17 form has two sides. When management provides it to the employee, the left hand side (side A) is prepopulated with the requirements of the employee's position, i.e., the hours that an employee is expected to perform for each job activity for his or her job classification. The right hand side (side B) is for the physician to fill out, stating a description of the clinical findings, diagnosis due to injury, whether the employee is advised to resume work, and the employee's ability to perform regular work continuously or intermittently in terms of hours per day for each activity listed on side A. There is also a box for "other" on side A, for the physician's comments.

The employee submits the physician-completed CA-17 to his or her supervisor, who provides a copy to the EComp's office and the Occupational Health and Claims Office (OHCO) (formerly called the Health and Resource Management Office). Management then conducts a search for limited duty work within the restrictions set out by the physician and determines what work is available. Based thereon, management prepares a limited duty job offer (2499), which the OHCO reviews to ensure that the duties do not exceed the medical limitations. Management may accept an incomplete CA-17 and advise the employee that it needs to be filled out correctly, but the employee does not always provide a fully-completed form before being issued a 2499.[1]

Activities in the 2499 are set out in half-hour increments. If the employee has more than one active claim, the 2499 is based on the greatest limitations in each. After that, the 2499 is presented to the employee to accept or reject. If the employee submits a subsequent CA-17 that changes the medical restrictions, a new 2499 will be issued.

If employee has an existing 2499 and refuses a new 2499, the Postal Service requests that the DOL make a suitability ruling on the new job offer. When a ruling is pending, the employee continues to work under the existing 2499. If the DOL finds the new job offer suitable, the employee must accept it or lose benefits.

The Postal Service has a District Reasonable Accommodation Committee (DRAC), which can set up a meeting to provide an employee on limited duty an opportunity to provide additional information about his or her work limitations/restrictions. The DRAC has the authority to modify the 2499 with which an employee was presented. Employees' participation is voluntary, and nonattendance does not affect their benefits.

If OWCP denies a claim, benefits from the DOL are discontinued. The employee then can

[1] Ballard at Tr. 842.

either go back to regular duties, request reasonable accommodation, or request light duty, which is also offered to employees who sustained off the job injuries. Light duty requests are considered by the postmaster on a case-by-case basis as far as whether work is available. The employee must renew the request every 30 days.

Boyd's employment and union activities

The Respondent has employed Boyd since August 1998, and she has been a letter carrier for 18 years. Boyd has held positions for the Union as follows: shop steward from 2008–2020; vice-president and shop steward from 2014–2016; and president and chief shop steward since January 2018. She has filed over 225 grievances in those positions. General Counsel's Exhibit 10 contains charges (not necessarily all) that Boyd has filed, going back to February 2018. Determining what percentage of her grievances or charges were meritorious over the years is impossible, and I will not hazard a guess.

General Counsel's Exhibit 10(a) contains charges that Boyd filed relating to a supervisor's placing her on emergency placement, in May 2020, contending that it was in retaliation for her engaging in union activities; and not providing information regarding her 1.5 hours of work assignment. The charges were partially dismissed on November 18, 2020, or closed on compliance on March 31, 2021.

Emergency placement is a disciplinary action in which an employee is instructed to immediately clock out and leave the facility, pending investigation. The emergency placement was rescinded on about June 1, and the resulting notice of removal resolved on July 30, 2020. I will not further address this or the October 2019 emergency placement on which Boyd was placed, in connection with her union activities, which also was subsequently rescinded. Both were or should have been brought to the attention of the Regional Director in Case 12-CA-261361. The same holds true for an incident in December 2019, when Boyd testified that she was asked for the first time for medical clearance before she could come on post office property to conduct union business.

The General Counsel also submitted various documents concerning the Respondent's past failures to provide or timely provide information to the Union, for the proposition that the Respondent has general animus toward the Union and specific animus toward Boyd. I will only address those occurring after October 9, 2020:

(1) A settlement agreement approved by the Regional Director on January 14, 2021, concerning various postal facilities in Tallahassee. Boyd signed it for the Union. (GC Exh. 7.) The charges were dismissed on November 28, 2020, or closed on compliance on March 31, 2021. (Jt. Exh. 2 at 1.)

(2) A Board Decision and Order dated July 21, 2021, approving a formal settlement stipulation relating to Lake Jackson. (GC Exh. 3.) It was closed on compliance on October 21, 2021. (Jt. Exh. 2 at 1.)

(3) An August 31, 2021, Order of the 11th Circuit Court of Appeals enforcing a Board Order, again relating to Lake Jackson. (GC Exh. 6.)

On the last day of hearing, counsel the General Counsel introduced management emails from May 28 – July 17, 2020, in reference to EEO complaints and compliance matters. (GC Exh. 101.) They predate the Regional Director's dismissal on October 9, 2020, but it appears that they are the same document that the General Counsel identified but did not introduce on March 21 as General Counsel's Exhibit 17(c). He represented that he had just learned of these emails over the preceding weekend. Their designation as a plaintiff's exhibit indicates that the Respondent produced them in connection with other proceedings. Apparently, they were not in the possession of the Regional Director when he issued his dismissal, so I will consider them.

On May 28, Postmaster Blair Beaty wrote to Jeffrey Reeves of Post Office Operations that he was feeling harassed by being named in four EEO complaints and believed that Boyd was instructing employees to add them to their complaints. Reeves responded that she was on emergency placement (see above), to which Beaty responded, "Hope it sticks." (GC Exh. 101 at 2.)

On July 17, Paul Steele, manager of post office operations, wrote to Matthew Hasbrouck, operations program specialist, stating "On a positive note, I did issue the notice of removal to NALC President Teresa Boyd." (GC Exh. 101 at 1.) Hasbrouck replied, "Let's all hope that it sticks. She has gotten away with so much for so long." (Ibid.)

Boyd's on-the-job injuries

I will highlight what occurred prior to October 9, 2020, rather than describe in detail every incident and document.

Boyd has had approximately five on-the-job-injuries as a postal employee. The first was an automobile accident in March 2006, which caused injuries to her neck. She filed a workers compensation claim for that, as well as for carpal tunnel syndrome in her left hand, which was discovered when she had nerve conduction tests on her neck. She was out of work for 2 months. Upon her return, she worked 40-hour weeks doing limited-duty desk/clerical work (office work) for the first 2 weeks and after that delivering mail 4 hours a day and doing desk work 4 hours a day. Six months later, she was released to go back to regular duty but with a weight limitation restriction.

Her next injury was in 2009, for bilateral carpal tunnel syndrome. She received a modified job order and performed office clerical duties, such as answering phones and writing up certified mails, for about 2 months. She was then released to regular duty, with a weight restriction, and resumed delivering mail.

Her bilateral carpal tunnel syndrome returned in 2013, and she filed a new claim (case number ending in 799). As a result, she received a 2499, assigning her office work. After about 2 months, her physician released her to return to her regular duties.

In February 2015, she suffered a neck and back/lumbar sprain injury, filed another claim (claim number ending in 987), and submitted a CA-17 filled out by Dr. Richard Blecha on August

13.[2] Thereafter, she received and signed a 2499 that gave her regular duties but with a weight limitation.

In October 2016, she had an accident in which she broke her middle right finger, damaged her ulnar nerve, and had a nose contusion. She filed a claim (claim number ending in 949), which was accepted, either initially or on reconsideration.

Boyd returned to work in November 2017, when she was released to go back to work, with a weight restriction. She resumed her regular letter carrier duties.

She continued driving until June 2019, when her physician in a CA-17 for claim 949 stated that she could do no heavy lifting and no driving. As a result, she was assigned 8 hours of office work/union business and no driving. The doctor repeated this in a July 2019 CA-17. From May to October, she was assigned a desk job pursuant to those restrictions.

In a CA-17 that Dr. Blecha filled out on August 23, 2019, he stated that Boyd's lifting should be limited to intermittent 15 pounds, and he stated, "Will require more time than usual to complete mail delivery route. Will have occasional[sic] flare-ups of her neck problems such that she will not be able to turn her head & so will be unable to drive during those flare ups[sic] that usually last a few days." (GC Exh. 40.)

Dr. Blecha reiterated those limitations in a number of subsequent CA-17s. Some of them were contradictory on their face as far as her ability to drive. Thus, on the February 12, 2020 form, he added "She is unable to drive a postal vehicle." R. Exh. 1 at 10.

Morrison was the supervisor of customer service at Lake Jackson from June 2019 until April 20, 2020, and in that role supervised Boyd, as well as 46 other city carriers, 38 rural carriers, and 12 distribution clerks.

According to Boyd, Morrison first told her on October 29, 2019, that there was a problem with a (987) CA-17. He told her that one of the CA-17s dated October 19 was incorrectly filled out because it indicated she could do no tasks for over 1 hour. He told her to go home because he had no work for her based on those restrictions. She disputed his conclusion. As I stated earlier, I credit his testimony that he advised her on a number of occasions prior to that date that her CA-17s were inadequate.

In late 2019, Boyd had at least 10 conversations (four in December) with Bedrosian, in which she requested a 2499. In early December, Bedrosian stated that she had one ready. In mid-December, when Boyd gave Morrison a CA-17 dated December 19 from Dr. Blecha (GC Exh. 43, which is illegible), he said that he was waiting for Bedrosian to come up with a modified job offer.

On January 4, 2020, Boyd emailed Station Manager Matthew Staley, regarding management's failure to provide her a modified job offer despite her repeated requests since

[2] She testified that the delay was due to her difficulty finding a doctor who would accept workers compensation. She saw other doctors for her other injuries.

approximately September 2019. (GC Exh. 44.)

On February 11, 2020, Morrison presented Boyd with a modified job offer, which she accepted. (GC Exh. 50a; R. Exh. 3 at 1.) It gave her 1.5 hours a day, casing mail. This is the 2499 under which Boyd is still working. She objected that it was not a suitable job offer, and he responded that was all he had available.

In preparing the 2499, Bedrosian had agreed with Morrison that Dr. Blecha's CA-17s were very vague concerning the flare-ups and that because they could occur at any time on any day, management felt that her driving would be a safety hazard. As Morrison explained at trial, Dr. Blecha's CA-17s were contradictory as to whether she could drive.

On April 20, 2020, the DOL denied Boyd's claim for disability for her February 2015 injury (sprain of back, lumbar region and sprain of neck), based on her failure to provide additional evidence that they had requested.

Events in 2021

Respondent's Exhibit 9 shows that Occupational Health Nurse Stephen Johnson sent Boyd the following:

(1) By letter of February 12, he invited her to meet with the DRAC via Zoom on February 18 to assess her job-related injuries and working status and the reasonable accommodations that she believed necessary.

(2) After she did not appear[3], he sent her a letter dated February 18, requesting that she provide information and medical documentation from her medical provider within 14 calendar days of receipt of the letter.

(3) By letter of March 8, he stated that she had not yet provided such and needed to submit it with 7 calendar days of receipt of the letter.

(4) By letter of March 22, he advised Boyd that her case was being closed because she had submitted nothing that would enable the DRAC to determine whether she was an individual with a disability in need of reasonable accommodation.

Boyd offered no testimony regarding these letters and therefore did not deny receiving them. The DRAC had the authority to validate the 1-1/2 hours or determine that she could safely do more, in which case an updated 2499 would have been prepared that gave her more hours.

On February 2, Ballard mailed requests to DOL, one for claim 987 and the other for claim 949, for a second option, stating that the Postal Service needed clarification of Boyd's limitations and asking that she be scheduled for a second opinion. (R. Exh. 4 at 2, 5). DOL prepared the questions for the physician. Having gotten no response, Ballard sent a DOL letter dated March 8,

[3] Unrebutted testimony of Ballard, Miller, and Moscola-Calvo, who were on the DRAC.

pointing out that the doctor to whom the DOL had sent a second opinion request had failed to address certain questions. (Ibid at 9.) To date, DOL has still not responded.

Dr. Blecha filled out the following CA-17s, all of which contain a 15-pound continuous and 25-pound intermittent weight limitation on lifting/carrying:

(1) July 21 – He checked that Boyd could work full-time, and he put driving a vehicle for 4–6 hours per day (6 hours' driving is on side A). In a July 26 letter, he stated that she "may have" occasional flare-ups typically lasting 2–3 days. (GC Exhs. 21, 22.) She hand-delivered these to Morrison on July 26.

(2) September 21 – Dr. Blecha repeated what he stated in the July 21 CA-17, other than stating that she could work 8-plus hours a day and adding that the flare-ups occur only 3–4 times a year. (R. Exh. 1 at 11; GC Exh. 59.) She hand-delivered this to Miller on September 24 (see GC Exh. 59).

(3) October 26 (he completed two forms) (R. Exh. 1 at 16, 18). Taken together, they stated that she could work 8-plus hours a day, could drive 4–6 hours, and "my have" occasional flare-ups three to four times a year, typically lasting 2–3 day. She emailed these to Miller on January 22, 2022. (GC Exh. 58a, 58b.) She could not recall if she provided them to him earlier.

Ballard testified that the September 21 CA-17 was incomplete because Dr. Blecha did not provide the hours that Boyd could do for each activity but that one of his October 26 CA-17s (R. Exh. 1 at 16) was complete. She did not testify specifically about the July 21 CA-17, but it was virtually identical to that one.

By letter of May 20, to Johnson of the DRAC, Boyd stated that, even though the DRAC had closed her case, she wanted to address her situation. She said that her only current restriction was a weight limit and that she could perform 97 percent of her regular job duties. She did not, however, request further action from the DRAC. (GC Exh. 91e.)

By letter of May 12, Miller informed Boyd that she had to submit updated medical documentation, requesting to work 8 hours daily and 40 hours weekly as a light duty request. (GC Exh. 91b.) Boyd replied by email on May 19, stating that her injuries were job related and came under limited duty. (GC Exh. 91c.)

Treatment of other employees (comparators)

Miller testified that he has sent limited-duty employees to other facilities, depending on their restrictions and the needs of other stations. Postmaster Moscola-Calvo makes the final decisions. When he returned to Lake Jackson in May or June 2020, about 30 employees were performing limited duty. He assigned two of them to other facilities. "Employee 1," who had a weight restriction, was assigned to Westside, where she performed office work (assisting with customer service at the window and electronically). "Employee 2" was assigned to Centerville." Presently, Employee 1 is out of work because there is no work for her at either Lake Jackson or Westside;

Employee 2 is back to full duty. Since his return, four letter carriers have gone on limited duty, two of them full-time.

Morrison testified that he was not aware of other limited duty carriers who were transferred to work at another station while he was at Lake Jackson. When he was there, two employees in addition to Boyd worked 1.5 hours. He provided no details.

The following witnesses of the General Counsel testified regarding their CA-17s and 2499s.

Bush is a city carrier at Lake Jackson. She had an on-the-job injury on February 10, 2021, and submitted a CA-17, signed by her physician on that same date, to a supervisor. See GC Exh. 80a. The doctor did not complete either side but in the "other" box stated no use of right hand. Both sides A and B were blank as far as activities. Station Manager Hamm instructed her to sit at the desk and answer the phone, and Bush worked a 40-hour week doing office work. Several times starting about a month later, Bush requested a 2499 from Hamm or Miller, who replied that they would get around to it. Bush never received a 2499 prior to being released by her physician to return to full duty on May 14, 2021 She never filed an OWCP claim.

Gordon is a city carrier at Lake Jackson. She worked there under a 2499 with weight restrictions, but in November 2021, Miller told her that she was transferred to Westside because no limited duty work was available for her at Lake Jackson. She worked 40 hours a week. She stopped working for Westside in February 2022, being told that she could no longer work her modified job, and she has not worked for the Postal Service since then.

Lamb is a CCA at Lake Jackson. She suffered an on-the-job injury in May 2021 and submitted to Miller a CA-17 signed by her physician on July 15, 2021. (See GC Exh. 83a at 3.) She received a 2499 on July 22, assigning her office duties. Ibid at 1. She performed those duties 8 hours a day at first, but her hours were later reduced to six or seven because she was not needed for eight. Since her permanent assignment to Lake Jackson in 2020, Miller has sent her to Leon a few times, stating that they needed her there. At Leon, she also performed office activities. She worked overtime at least once or twice a month until she recently stopped working.

City Carrier Sheffield is at Leon. She had a back injury in June 2020, and was out of work until December 20, 2020. She submitted a CA-17 to Morrison that put restrictions on her walking, standing, and lifting and prevented her from delivering mail. He assigned her to case mail for about an hour and perform office duties for the remainder of an 8-hour day. She received a 2499 in approximately January 2022. OWCP rejected her claim, and Morrison has given her light duty since then.

CCA Carrier Strickland is at Leon. She testified that in April, May, and June 2021, for two different on-the-job accidents, she submitted three CA-17s. In each case, she was issued a modified job assignment. See GC Exh. 82d. She worked 8 hours a day doing office work and then, with an updated CA-17, 4 hours a day doing office work and 4 hours casing mail.

Analysis and Conclusions

The 8(a)(3) Analytical Framework

In cases in which the issue is the motive behind an employer's action against an employee (was it legitimate or based on animus on account of the employee's union or protected concerted activities?), the appropriate analysis is provided by *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); see also *Auto Nations, Inc.*, 360 NLRB 1298, 1301 (2014), enfd. 801 F.3d 767 (7th Cir. 2015).

Under *Wright Line,* the General Counsel bears the initial burden of establishing that an employee's union or other protected concerted activity was a motivating factor in the employer's adverse employment action. *Wright Line*, above at 1089. The Board has held that the General Counsel can meet this burden by establishing (1) union or other protected activity by the employee, (2) employer knowledge of that activity, and (3) antiunion animus, or animus against protected activity, on the employer's part. See, e.g., *Consolidated Bus Transit*, 350 NLRB 1064, 1065 (2007), enfd. 577 F.3d 467 (2d Cir. 2009). In *Tschiggfrie Properties, Ltd.*, 368 NLRB No. 120, slip op. at 5–8 (2019), the Board clarified the animus element of this test, explaining that the General Counsel "does not *invariably* sustain his burden of proof under *Wright Line* whenever, in addition to protected activity and knowledge thereof, the record contains *any* evidence of the employer's animus or hostility toward union or other protected activity." Id., slip op. at 7 (emphasis in original). "Instead, the evidence must be sufficient to establish that a causal relationship exists between the employee's protected activity and the employer's adverse action against the employee." Id., slip op. at 8.

Once the General Counsel makes out a prima facie case, the burden shifts to the respondent to show that the same action would have taken place even in the absence of the protected activity. *Wright Line*, above at 1089; *Manno Electric, Inc.*, 321 NLRB 278, 280 fn. 12 (1996). To establish this affirmative defense, an employer cannot simply present a legitimate reason for its action but must persuade by a preponderance of the evidence that the same action would have taken place even in the absence of the protected activity. *East End Bus Lines, Inc.*, 366 NLRB No. 180, slip op. at 1 (2018); *Consolidated Bus Transit*, 350 NLRB 1064, 1066 (2007). Where the General Counsel has made a strong showing of discriminatory motivation, the employer's defense burden is substantial. *East End Bus Lines*, Ibid; *Bally's Park Place, Inc.*, 355 NLRB 1319, 1321 (2010), enfd. 646 F.3d 929 (D.C. Cir. 2011).

If a respondent's proffered justification for its action is found pretextual, it must be determined whether surrounding facts tend to reinforce that inference of unlawful motivation. *Electrolux Home Products, Inc.*, 368 NLRB No. 34, slip op. at 3, 4 (2019), citing *Shattuck Denn Mining Corp. v. NLRB*, 362 F.2d 466, 470 (9th Cir. 1966).

The General Counsel argues (GC Br. 58, et. seq.) that *Electrolux* and *Tschiggfrie*, above, should be overturned, but that is a matter for the Board, not for me.

Respondent's refusal to increase Boyd's hours

The General counsel frames the issue as whether the Respondent failed and refused to assign Boyd to a full-time limited duty work schedule because of her union activities, not whether the decision not to allow her to drive was unlawfully motivated. (GC Br. 93). I disagree. Boyd has consistently sought to resume her regular duties as a letter carrier, and the issue boils down to whether because of Boyd's union and other protected activities, the Respondent, after about October 17, 2020, refused to increase her 1.5 hours a day work schedule and assign her to work 8 hours regular letter carrier duties, a mix of regular carrier duties and office work, or straight office work at Lake Jackson or at another station.

Elements one and two necessary for a prima facie case are satisfied by Boyd's positions with the Union. As to animus, I decline to accept the General Counsel's premise that the Respondent's history of unfair labor practices evinces implied animus against Boyd. I cannot conclude that the Tallahassee Post Office has such a history. Boyd has filed over 200 grievances and numerous charges, and while some, involving requests for information, have been found meritorious, the General Counsel has not established that the Respondent has a pattern of violating the Act. Significantly, the General Counsel provided no evidence that the Tallahassee Post Office has been found to have committed any violations of Section 8(a)(3), so that even if there were general animus, it would be difficult to find the nexus that *Tschiggfrie Properties,* above, requires.

Moreover, to the extent that the General Counsel argues that events occurring before October 9, 2020, demonstrated animus toward Boyd, I will not consider them for the reasons that I previously stated, other than the emails discussed below.

The General Counsel further contends that animus is shown by (1) the Respondent's treatment of other employees vis-à-vis Boyd, which I will subsequently discuss; and (2) May and July 2020 emails by Managers Beaty and Steele in which they both expressed hope that Boyd's emergency removal would stick.

Thus, Beaty, in connection with EEO complaints, accused Boyd of instructing employees to add his name to EEO complaints and said that he felt harassed. Steele, in reference to compliance matters, referenced Boyd's status as NALC president, and stated, "She has gotten away with so much for so long." Despite their ambiguity, those statements convey hostility toward Boyd for protected activities and satisfy the element of animus for purposes of a prima facie case. The Respondent did not call either of the two managers to offer any context that would show their statements were not related to Boyd's protected activities.

Accordingly, I find that the General Counsel has made out a prima facie case of unlawful discrimination, and I now turn to whether the Respondent has rebutted that prima facie case.

It goes without saying that the Postal Service has a right, indeed an obligation, to ensure that its letter carriers safely drive its vehicles without undue risk to either them or the public.

After October 9, 2020, Dr. Blecha filled out four CA-17s: one on July 21, one on September 21, and two on October 26, 2021. Ballard testified that one of the October 26 forms was complete.

The July 21 CA-17, together with Dr. Blecha's July 26 letter contained the same information, so it must also be considered complete. The September 21 form did not provide any hours per activity on side B, so I will accept the Respondent's contention that it was defective.[4] In this regard, none of the comparators but Bush submitted a CA-17 with side B not completed, and Bush never filed an OCHO claim.

Dr. Blecha's July form and letter, taken together, stated that Boyd could work an 8-hour day and drive 4–6 hours even though she might have occasional flare-ups typically lasting 2–3 days. In the September 21 CA-17, he added for the first time that such flare-ups occur only 3–4 times a year. He repeated this in the October CA-17, indicating that Boyd could be expected to be unable to drive at most 12 days a year. In both of these, he further stated that she could work 8-plus hours a day. Thus, all of the medical opinions he provided in 2021 were that Boyd could work at least a full 8-hour day and could drive most or all of the 6 hours that a letter carrier's position entails.

The emails of two high-level management officials in May and July 2020 show animus toward Boyd for assisting other employees with their EEO complaints and for activities as a union official and reflect a desire to keep her off Postal Service premises.

Regarding the treatment of other employees, the Respondent (R. Br. 8, et. seq.) argues that the comparators' situations were distinguishable from Boyd's: (1) Lamb's medical restrictions were different, including no driving restrictions and less limitations on hours; (2) Sheffield was actually on light duty status after denial of her DOL claim, not limited duty; (3) Bush never filed a OWCP claim and therefore could not have had a limited duty assignment; (4) Miller assigned Gordon work at Westside because there were already limited duty employees at Lake Jackson and no work was available for her; and (5) Strickland's limited duty assignments were at Leon, not Lake Jackson.

On the other hand, the General Counsel (GC Br. 52) contends that "light duty versus limited duty is a distinction without a difference," because each of the comparators had similar job functions as Boyd, and each of them was given the opportunity to perform out-of-craft work on a full-time or nearly full-time basis.

I agree with the General Counsel that the record supports the conclusion that the Respondent has made more efforts to provide alternative work, in particular, office duties, to other letter carriers with medical limitations. That other carriers had different injuries than Boyd's neck/lumbar sprain does not change the fact that they were allowed to work full-time or almost full-time performing office duties during the durations of their limitations. Indeed, the Respondent assigned Boyd full-time or part-time office work after previous injuries that she suffered. I find it hard to believe that with the Tallahassee Post Office's multiple locations, management could not find more hours for Boyd, either driving, mixed driving and office, or office.

The Respondent's disparate treatment of Boyd strongly suggests that unlawful animus motivated the decision to hold back her number of hours. See, e.g., *Mondelez Global, LLC*, 369

[4] The Regional Director already considered and decided the question of whether Boyd's earlier CA-17s with side A activities not filled out were defective.

NLRB No. 46, slip op. at 4 (2020); *La Gloria Oil & Gas Co.* 337 NLRB 1120, 1124 (2002), affd. 71 Fed.Appx. 441 (5th Cir. 2003); *Southwire v. NLRB*, 820 F.2d 453, 460 (D.C. Cir. 1987).

I add that Respondent's continued resistance to giving Boyd more hours of work despite her repeated efforts to obtain them strikes me as inexplicable. Significantly, there is nothing in the record that Boyd has sought medical treatment for any flare-ups since Dr. Blecha first mentioned them in August 2019. Clearly, the relationship between management and Boyd as a union official has been a rocky one, but refusing to give her more hours of work is not a proper vehicle for the Respondent to express displeasure with the way she has conducted union business.

For the above reasons, I conclude that the Respondent has failed to rebut the General Counsel's prima facie case.

The next question is the operable date to determine when the Respondent should have offered her an 8-hour day after October 9, 2020. I find July 26, 2021, the date that Boyd gave Miller the July 21, 2021 CA-17 and July 26 letter, to be appropriate. Together, they stated that she could work 8 hours a day and drive 4–6 hours, in spite of the possibility of having occasional flare-ups typically lasting 2–3 days.

Accordingly, I conclude that since July 26, 2021, the Respondent has violated Section 8(a)(3) and (1) by not offering Boyd an 8-hour workday.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The National Association of Letter Carriers, Branch 1172, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. By the following conduct, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act and violated Section 8(a)(3) and (1) of the Act: failed and refused to provide Teresa Boyd with more hours of work since July 26, 2021.

REMEDY

Because I have found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Because the Respondent discriminatorily denied hours of work to Teresa Boyd, it must make her whole for any losses of earnings and other benefits suffered as a result of that discrimination. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest at the rate prescribed in *New Horizons*, 283 NLRB 1173 (1987), compounded daily as prescribed in *Kentucky River Medical Center*, 356 NLRB 6 (2010).

In addition, the Respondent shall compensate Boyd for the adverse tax consequences, if any, of receiving a lump-sum backpay award and to file a report with the Regional Director for Region 12, within 21 days of the date the amount of backpay is fixed, either by agreement or Board order, a report allocating the backpay award to the appropriate calendar years. *Advoserv of New Jersey, Inc.*, 363 NLRB 1324 (2016); *Don Chavas, LLC*, 361 NLRB 101 (2014).

The General Counsel seeks a number of novel remedies:

(1) Compensation for all consequential economic damages and emotional distress that Boyd suffered.
(2) Issuance of a letter of apology from Postmaster Moscola-Calvo to Boyd.
(3) Requiring the Respondent to provide its managers/supervisors at Tallahassee, Florida facilities with a copy of any decision, obtain written certifications that they have read and understood the contents thereof, and submit copies of the certification to the Regional Director of Region 12.

The Board to date has not determined that such remedies should be considered and, without making a judgment of whether they are worthy of consideration, it is not within my purview to sua sponte expand remedies under the Act. Accordingly, I will not do so. As a matter of dicta, with regard to the letter of apology, the remedial order and notice adequately address the violation, and I find such letter unnecessary.

ORDER

The Respondent, United States Postal Service, Tallahassee, Florida, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Discriminating against employees who engage in activities on behalf of National Association of Letter Carriers, Branch 1172, AFL–CIO.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act:

(a) Offer Teresa Boyd an 8-hours a day, 40-hours a week work schedule.

(b) Make Boyd whole for any loss of earnings and other benefits suffered as a result of the discrimination against her in the manner set forth in the remedy section of the decision.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic

form, necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facilities in Tallahassee, Florida, copies of the attached notice marked "Appendix."[5] Copies of the notice, on forms provided by the Regional Director for Region 12, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. The Respondent shall take reasonable steps to ensure that the notices are not altered, defaced, or covered by any other material. If during the pendency of these proceedings, the Respondent has gone out of business or closed any of its Tallahassee facilities, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since July 26, 2021.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

The complaint is dismissed insofar as it alleges violations of the Act that I have not specifically found.

Dated, Washington, D.C. June 7, 2022

Ira Sandron
Administrative Law Judge

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board (NLRB) has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT refuse to give you more hours of work or otherwise discriminate against you for engaging in activities on behalf of National Association of Letter Carriers, Branch 1172, AFL–CIO.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL within 14 days from the date of the Board's Order, offer Teresa Boyd an 8-hour a day, 40-hour a week work schedule.

WE WILL make Boyd whole for any loss of earnings and other benefits suffered as a result of our discrimination against her, in the manner set forth in the remedy section of the decision.

UNITED STATES POSTAL SERVICE
(Employer)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov

South Trust Plaza, 201 East Kennedy Boulevard, Suite 300, Tampa, FL 33602-5824
(813) 228-2641, Hours: 8:00 a.m. to 4:30 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/12-CA-271025 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER (813) 228-2641.